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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,516	12/24/2001	James A. Gravelle	P0120	8647
28020	7590	08/02/2006	EXAMINER	
GRAY, PLANT, MOOTY, MOOTY & BENNETT, P.A. P.O. BOX 2906 MINNEAPOLIS, MN 55402-0906			FERGUSON, MICHAEL P	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 08/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/033,516	<b>Applicant(s)</b> GRAVELLE, JAMES A.	
	<b>Examiner</b> Michael P. Ferguson	<b>Art Unit</b> 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 April 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 28, 2006 has been entered.

### ***Information Disclosure Statement***

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Claim Objections***

3. Claim 15 is objected to because of the following informalities:

Claim 15 (line 13) recites "of the cross-arm". It should recite --of the leg--.

Claim 15 (line 23) recites "of the cross-arm". It should recite --of the leg--.

For the purpose of examining the application, it is assumed that appropriate correction has been made.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5,7-12,14-18,20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Thompson (USPN 4,771,137).

As to claims 1 and 8, Thompson discloses a support bracket for securing wire fence elements **W** to posts having T-shaped cross-sections with a leg **52** and two cross-arms **56**, the bracket having the following:

a first slot **54** adapted and constructed to receive a cross-arm of a fence post, the first slot having a width, length, and configuration generally conforming to a width, length, and configuration of the cross-arm to be received therein;

a second slot **54** adapted and constructed to receive a cross-arm of the fence post, the second slot being generally aligned with the first slot, the second slot having a width, length, and configuration generally conforming to a width, length, and configuration of the cross-arm to be received therein; and

a third slot **50** adapted and constructed to receive a leg of the fence post, the third slot being generally perpendicular to the first and second slots and having a width, length, and configuration generally conforming to a width, length, and configuration of the leg to be received therein;

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whereby the bracket can be mounted to the post in a first position in which the leg is received in the third slot, and a second position in which the leg extends opposite the third slot (Figures 1,4,5).

As to claims 2 and 9, Thompson discloses a support bracket having the following:

a first tab **18** connected to a first slot **54**; and

a second tab **18** connected to a second slot **54**;

whereby the first and second tabs are adapted and constructed to facilitate opening of the slots for insertion and removal of cross-arms therefrom (Figure 1).

As to claims 3 and 10, Thompson discloses a support bracket fabricated from an electrically insulative material (column 2 lines 61-66).

As to claims 4 and 11, Thompson discloses a support bracket fabricated from a relatively flexible electrically insulative material (column 2 lines 61-66).

As to claims 5 and 12, Thompson discloses a support bracket fabricated from a thermoplastic material (column 2 lines 61-66).

As to claims 7 and 14, Thompson discloses a support bracket having a reinforcing rib **34,48** adjacent to a third slot **50** (Figure 1).

As to claim 15, Thompson discloses a method for securing wire fence elements **W** to fence posts having T-shaped cross-sections with a leg **52** and two cross-arms **56**, the method comprising the following steps:

providing a first support bracket having a first slot **54** adapted and constructed to receive a cross-arm of a fence post, a second slot **54** adapted and constructed to

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receive a cross-arm of the fence post, each of the slots having a width, length, and configuration generally conforming to a width, length, and configuration of the cross-arm to be received therein, and a third slot **50** adapted and constructed to receive a leg of the fence post, the third slot being generally perpendicular to the first and second slots and having a width, length, and configuration generally conforming to a width, length, and configuration of the leg to be received therein;

providing a second support bracket having a first slot **54** adapted and constructed to receive a cross-arm of a fence post, a second slot **54** adapted and constructed to receive a cross-arm of the fence post, each of the slots having a width, length, and configuration generally conforming to a width, length, and configuration of the cross-arm to be received therein, and a third slot **50** adapted and constructed to receive a leg of the fence post, the third slot being generally perpendicular to the first and second slots and having a width, length, and configuration generally conforming to a width, length, and configuration of the leg to be received therein;

mounting the first bracket to a post in a first position in which the leg of the post is received in the third slot of the bracket; and

mounting the second bracket to a post in a second position in which the leg of the post extends opposite the third slot of the bracket (Figures 1,4,5).

As to claim 16, Thompson discloses a method comprising the following steps:

providing respective first tabs **18** connected to first slots **54** of the brackets;

providing respective second tabs **18** connected to second slots **54** of the brackets; and

using the tabs for leverage to open the slots for insertion and removal of the fence post cross-arms therefrom (Figure 1).

As to claim 17, Thompson discloses a method wherein steps of providing a first and second bracket comprise fabricating the brackets from a relatively flexible electrically insulative material (column 2 lines 61-66).

As to claim 18, Thompson discloses a method wherein steps of providing a first and second bracket comprise fabricating the brackets from thermoplastic material (column 2 lines 61-66).

As to claim 20, Thompson discloses a method wherein steps of providing a first and second bracket comprise providing a reinforcing rib **34,48** adjacent to a third slot **50** (Figure 1).

As to claim 21, Thompson discloses a support bracket for securing a wire fence element **W** to a T-shaped fence post having a leg and two cross-arms, the bracket comprising:

first and second interior slots **54** arranged at a slightly increasable oblique angle with respect to each other, each slot having interior dimensions only slightly exceeding exterior dimensions of a respective cross-arm of the fence post;

a third interior slot **50** generally directed oppositely from a bisector of the oblique angle, and having interior dimensions only slightly exceeding exterior dimensions of the leg of the fence post;

first and second tabs **18** connected to the bracket adjacent respective first and second slots, each tab being externally directed at an angle and by an amount sufficient

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to enable a user to apply leverage by hand to increase the oblique angel and thereby enable insertion and removal of the cross-arms into their respective first and second slots;

in which the bracket is mountable to the post either with the leg received within the third slot, or with the leg extending opposite the third slot (Figures 1,4,5).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6, 13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson view of Oltmanns (USPN 3,684,247).

As to claims 6 and 13, Thompson discloses a support bracket fabricated from polyethylene instead of polypropylene (column 2 lines 61-66).

Oltmanns teaches a support bracket fabricated from polypropylene, polyethylene, or other suitable dielectric material which is flexible over a relatively wide temperature range to permit utilization of the device in all types of climates (column 2 lines 37-55).

Inasmuch as the references disclose polyethylene and polypropylene as art recognized equivalents, it would have been obvious to one of ordinary skill in the exercise art to substitute one for the other. In re Fout, 675 F.2d 297, 301, 213 USPQ 532, 536 (CCPA 1982).



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As to claim 19, Thompson discloses a method wherein steps of providing a first and second bracket comprise fabricating the brackets from polyethylene instead of polypropylene (column 2 lines 61-66).

Oltmanns teaches a bracket fabricated from polypropylene, polyethylene, or other suitable dielectric material which is flexible over a relatively wide temperature range to permit utilization of the device in all types of climates (column 2 lines 37-55). Inasmuch as the references disclose polyethylene and polypropylene as art recognized equivalents, it would have been obvious to one of ordinary skill in the exercise art to substitute one for the other. In re Fout, 675 F.2d 297, 301, 213 USPQ 532, 536 (CCPA 1982).

### ***Response to Arguments***

8. Applicant's arguments, filed April 28, 2006, with respect to the rejection(s) of claim(s) 1-5,7-12,14-18 and 20 under 35 USC 102 in view of Wilson (US 3,652,780) and Hansen (US 3,801,731) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Thompson (US 4,771,137).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (571)272-7081. The examiner can normally be reached on M-F (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571)272-7087. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



MPF  
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